

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Offic**Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231*B.B.*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/147,405 04/01/99 GUSS

B REF/GUSS/P33

<input type="checkbox"/>	EXAMINER
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HM22/0509

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LEE, I.	ART UNIT	PAPER NUMBER
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1645

*13*

DATE MAILED:

05/09/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No. 09/147,405	Applicant(s) Guss et al
	Examiner Li Lee	Group Art Unit 1645

Responsive to communication(s) filed on Feb 29, 2000

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle* 1035 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claim

- Claim(s) 1-29 is/are pending in the application.
- Of the above, claim(s) 2-24 and 26-29 is/are withdrawn from consideration.
- Claim(s) \_\_\_\_\_ is/are allowed.
- Claim(s) 1 and 25 is/are rejected.
- Claim(s) \_\_\_\_\_ is/are objected to.
- Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All  Some\*  None of the CERTIFIED copies of the priority documents have been received.
- received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- Notice of References Cited, PTO-892
- Information Disclosure Statement(s), PTO-1449, Paper No(s). 2
- Interview Summary, PTO-413
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Notice of Informal Patent Application, PTO-152

-- SEE OFFICE ACTION ON THE FOLLOWING PAGES --

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## **DETAILED ACTION**

### ***Election/Restriction***

1. Applicant's election with traverse of Group I, claims 1 and 25 in paper No.12 filed Feb 29, 2000 is acknowledged. The traversal is on the ground(s) that the Applicant has amended the claims 1-3 to obviate the disclosure of Heimburger et al and therefore it can no longer be said that the inventions of groups I-XI lack a special technical feature which defines a contribution over the prior art.

Newly amended claims 1-3 directed an new technical feature linking groups I-XI, a protein or a polypeptide having fibrinogen binding activity from a strain among *Staphylococcus epidermidis*. However, applicant has received an action on the merits for the originally presented inventions, the inventions have been prosecuted on the merits. Moreover, Pier (US 5,055,455, Oct 8, 1991) teaches a adhesin protein from a strain among *Staphylococcus epidermidis*, which inherently has the fibrinogen binding activity (Abstract). Therefore, the new technical feature linking the inventions of groups I-XI does not constitute a special technical feature as defined by PCT Rule 13.2, as it does not define a contribution over the prior art.

For reasons set forth above and in the office action mailed on 12/06/99 the restriction requirement is deemed to be proper and is therefore made FINAL.

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2. This application has been filed with informal drawings which are acceptable for examination purposes only. The drawings are objected to by the draftsperson under 37 C.R.F. 1.84 or 1.152. See PTO-948 for details. Correction of the noted defects can be deferred until the application is allowed by the examiner.

***Information Disclosure Statement***

3. Items listed on form PTO-1449 filed on Dec 18, 1998 have be considered by the examiner.

***Nucleotide and /or Amino acid Sequence Disclosures***

4. This application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 CFR 1.821(a)(1) and (a)(2). However, this application fails to comply with the requirements of 37 CFR 1.821 through 1.825 for the reason(s) set forth on the attached Notice To Comply With Requirements For Patent Applications Containing Nucleotide Sequence And/Or Amino Acid Sequence Disclosures. The sequences disclosed in the specification, on pages 10, and 14-16, in Fig 6, in claims 8-9 must comply with the requirements.

***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

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Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 1 and 25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are drawn to a protein or a polypeptide which read on a product of nature. The claims should be amended to indicate the hand of the man e.g., by insertion of "Purified", as set forth in the specification, Examples. See MPEP 2105.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Pier (US 5,055,455, Oct 8, 1991).

Pier teaches a purified capsular polysaccharide adhesin/protein/polypeptide from a strain among *Staphylococcus epidermidis* (Abstract). The purified adhesin can be used as a vaccine to produce antibodies (Abstract). Pier does not expressly discuss the fibrinogen binding activity of the adhesin. However, the adhesin is purified from same *Staphylococcus epidermidis*, from same location of the bacterial, the slime, a capsule of the cell wall, and has same biological activity of

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adherence of adhesin-bearing pathogenic bacteria to tissue cells (column 3, lines 29-43) as claimed invention. Therefore, the adhesin of Pier inherently has the fibrinogen binding activity.

*Status of Claims*

9. No claims are allowed. All claims stand rejected.

Any inquiry of a general nature or relating to the status of this general application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Papers relating to this application may be submitted to Technology Center 1600, Group 1645 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). Should applicant wish to FAX a response, the current FAX number for Group 1600 is (703) 308-4242.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Li Lee whose telephone number is (703) 308-8891. The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Caputa, can be reached at (703) 308-3995.

Li Lee  
May 2, 2000

  
PHUONG T. BUI  
PATENT EXAMINER